

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of the Application of)
Columbus Southern Power company and)
Ohio Power Company for Approval of an)
Additional Generation Service Rate Increase)
Pursuant to their Post-Market Development)
Period Rate Stabilization Plans.)

Case No. 07-1132-EL-UNC

MOTION TO INTERVENE
AND
MOTION FOR A CONTINUANCE OF THE HEARING SCHEDULE
AND
MOTION FOR AN EXTENSION OF TIME
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers, moves the Public Utilities Commission of Ohio ("Commission" or "PUCO") to grant OCC's intervention in the above-captioned proceeding in which AEP seeks to increase consumers' rates for generation service.

Additionally the OCC moves the Commission to grant a two-month continuance of the hearing currently set for December 17, 2007,¹ whereby the hearing will commence on February 20, 2007. OCC requests this continuance in order to afford a fair opportunity for it to advocate on behalf of all of AEP's 1.3 million residential consumers, all of whom are directly affected by issues related to AEP's application for an Additional Generation Rate increase of approximately \$47 million.² Additionally, consistent with

¹ Ohio Adm. Code 4901-1-12 and 4901-1-13(A).

² Application (October 24, 2007) at 4.

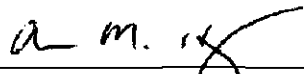
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the request to continue the hearing, OCC requests the PUCO extend the due date for testimony by intervenors be filed on February 11, 2007. It should be recognized that, under Ohio Adm. Code 4901-1-17(A), the discovery deadline will move with the continuance of the hearing.

The reasons for granting OCC's intervention and motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

On October 24, 2007, Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP"), both operating companies of American Electric Power Company, Inc. (jointly, "AEP"), filed an application ("Application") with the Commission in the above-captioned proceeding for approval of an increase in the rate they charge for generation service of \$35,167,037 for CSP customers and \$11,944,953 for OP customers pursuant to their post-market development period rate stabilization plans ("RSP").³ AEP claims that increase results from two factors: 1) complying with the Clean Air Interstate Rule and the Clean Air Mercury Rule; and 2) the costs of a change in methodology PJM Interconnection, LLC ("PJM") uses to calculate transmission losses.⁴ Additionally, AEP expressed its intention to implement its proposed increase on an interim basis within 90 days of the filing of its application.

I. MOTION TO INTERVENE

OCC moves to intervene under its legislative authority to represent residential utility consumers in Ohio, pursuant to R.C. Chapter 4911. R.C. 4903.221 provides, in

³ Application at 4.

⁴ Id.

part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential consumers may be “adversely affected” by this case, especially if the consumers are unrepresented in a proceeding regarding an application to increase generation rates. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor’s interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest is representing the residential consumers of AEP. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC’s advocacy for consumers will include advancing the position that AEP’s generation rates should be no more than what is reasonable and permissible under Ohio law, for service that is adequate under Ohio law. This interest includes that the rates for AEP residential customers should be no more than what is reasonable and lawful. OCC’s position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities’ rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceeding. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case in which AEP proposes to increase generation rates to its residential customers.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio's residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio recently confirmed OCC's right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.⁵

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio's residential consumers, the Commission should grant OCC's Motion to Intervene.

II. MOTION FOR A CONTINUANCE OF THE HEARING SCHEDULE ON AEP'S PROPOSED RATE INCREASE.

Shortly after AEP filed its application in this case, the PUCO, on November 2, 2007, issued a hearing schedule. The schedule is abbreviated and OCC therefore brings to the PUCO's attention certain matters of which the PUCO was not necessarily aware and which explain that the schedule will not accommodate the discovery necessary to prepare this case on behalf of residential consumers.⁶ In this case, AEP has asked the PUCO for authority, among other things, to collect from Ohio customers, the alleged generation costs of about \$35 million from CSP customers and of about \$12 million from OP customers.⁷ AEP claims that its Application will allow it to collect costs for new environmental compliance and costs billed by PJM.⁸ In addition to setting an expedited

⁵ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶18-20 (2006).

⁶ Entry (November 2, 2007).

⁷ AEP Application at 4.

⁸ *Id.*

hearing date, the Entry also established an expedited discovery process and expedited Motion timelines.⁹

It is not reasonably possible for OCC to prepare this case by the hearing date, nor does the present hearing date provide a reasonable and lawful opportunity for participation by any interested party. For these reasons and those more fully stated below the PUCO should extend the hearing date for a minimum of two months, until February 20, 2007.

Ohio Adm. Code 4901-1-13(A) provides for extensions and “continuances of public hearings” upon a showing of good cause. The circumstances of this Motion show good cause.

In order for OCC to fully litigate this case, OCC must engage an expert consultant to address the very technical requirements under the multiple environmental protection rules involved. The processes OCC must follow in obtaining an expert will likely take longer than the current schedule will permit. Those governmental processes involve steps that, in certain respects, are outside OCC’s control for timing purposes.

The OCC began to timely work toward the process to engage an expert as soon as we received the application. A consultant, once retained, should be given at least a month to review the application, participate in discovery and prepare testimony. To facilitate the consultant’s work, intervenor testimony date should be extended from December 11, 2007 to February 11, 2007.

Additionally, on October 9, 2007, the United States of America (“United States”) lodged a much publicized proposed Consent Decree (“Consent Decree”) that would resolve all of the issues that arose in Civil Actions between the United States along with

⁹ Entry at 3-4.

various other plaintiffs and AEP regarding AEP's environmental compliance. In these cases, the plaintiff alleged that AEP violated provisions of the Prevention of Significant Deterioration ("PSD") Act, 42 U.S.C. §§ 7470-7492, the non-attainment New Source Review ("NSR") provision of the Act, 42, U.S.C. §§ 7501-7515 and the federally-approved and enforceable Ohio and West Virginia State Implementation Plans ("SIP").¹⁰ In this federal case, the United States requested injunctive relief and the assessment of civil penalties for the defendants' violations of these rules.

The proposed resolution of this case requires AEP to bring assets into compliance that were required by the PSD, the NSR and the SIP rules that originated in the 1980s. To the extent that the resolution of this case requires the placement of environmental compliance controls that are based upon rule in effect in the 1980s, then AEP should not be recovering those assets from RSP customers under the terms of the RSP. Because the proposed resolution of this case will not be finalized until after November 21, 2007, when objections to the Joint Proposed Consent Decree are due,¹¹ the Commission should continue the hearing schedule to allow for consideration of the resolution of the federal civil action and to permit time for discovery on related issues.

R.C. 4903.082 requires that "All parties and intervenors shall be granted ample rights of discovery." That statute also requires the PUCO to regularly review its rules "to aid full and reasonable discovery by all parties." With respect to the rules referenced in R.C. 4903.082, Ohio Adm. Code 4901-1-16(A) provides that the purpose of discovery

¹⁰ *United States of America v. American Electric Power Service Corp., et al., Appalachian Power Company d/b/a/ American Electric Power, and Columbus Southern Power Company, d/b/a American Electric Power*, Civil Action C2 O5 360, In the United State District Court for the Southern District of Ohio, ("US v. AEP") Complaint (April 8, 2005).

¹¹ US v. AEP, Order (October 25, 2007).

rules in PUCO proceedings is to “facilitate thorough and adequate preparation for participation in commission proceedings.”

To assure that the rights under law and as granted by the Attorney Examiner for OCC and other intervening parties are exercisable—the right to conduct pre-hearing discovery, the right to present testimony, and the right to cross-examine witnesses called to support the Application—a continuance is needed.¹² An additional two months, while still minimal for preparation in a case of this significance and complexity, would provide OCC critical additional time needed to advocate on behalf of more than a million consumers. It is also possible that the continuance would afford time to pursue a potential negotiated resolution of the case.

Given the significance to the public and the complexity of the issues in this case, the statute and rule cannot possibly be satisfied by the limited opportunity for discovery and preparation that remains prior to a hearing on December 17. Moreover, the almost inevitable discovery disputes that will arise and the attendant delay in obtaining discovery responses in such circumstances cannot be resolved on the announced timeline. As is typical for utility applications, most of the information to be discovered in this case is held by the utility, so it is AEP that would benefit from the lack of process and the public that may commensurately suffer detriment.

Consistent with the continuance of the hearing and Ohio Adm. Code 4901-1-29(A)(1)(h), the deadline for OCC and other intervenors’ testimony will become February 11, 2007. That due date would meet the requirement under Ohio Adm. Code

¹² The Supreme Court of Ohio recently noted OCC’s discovery rights that are codified for parties under the PUCO’s rule in Ohio Adm. Code 4901-1-16 and elsewhere. *Ohio Consumers’ Counsel v. Public Utilities Comm.* (2006), 111 Ohio St.3d. 300, at ¶ 83. The General Assembly codified discovery rights in R.C. 4903.082.

4901-1-29(A)(1)(d) that all direct testimony by intervenors must be filed no later than seven days prior to the commencement of the hearing.

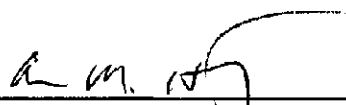
III. CONCLUSION

This application impacts residential customers through, *inter alia*, proposed increases in generation charges. For the reasons stated above, the PUCO should grant OCC's Motion to Intervene on behalf of all the approximately 1.3 million residential customers who have an interest in the outcome of this case. As set forth herein, OCC satisfies the criteria set forth in R.C. 4903.221 and the Commission's rules.

Additionally, because of the highly publicized Joint Proposed Consent Decree noticed by the United States and its likely connection and effect upon AEP's compliance requirements, the Commission should grant OCC's request for a continuance in the hearing schedule as described above.

Respectfully submitted,

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CONSUMERS' COUNSEL

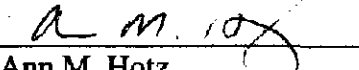


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's Motion to Intervene has been served upon the following parties via electronic transmission (pursuant to the Commission's November 2, 2007 Entry) this 9th day of November, 2007.



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